

RAPE OFFENCES (PROCEEDINGS) BILL.

EXPLANATORY MEMORANDUM.

OBJECT OF BILL.

The purpose of the Bill is to give effect to recommendations made by the Law Reform Commissioner in his report No. 5 on Rape Prosecutions (Court Procedures and Rules of Evidence), which was released on 3rd September, 1976.

The recommendations made on the Report relate to the offences of rape, attempted rape and assault with intent to rape, which are referred to in this memorandum as "rape offences". These recommendations involve the amendment of the *Magistrates (Summary Proceedings) Act 1975* in relation to committal proceedings for rape offences, the amendment of the *Evidence Act 1958* to provide for special rules of evidence in relation to rape offences, and the amendment of the *Crimes Act 1958* to limit the time within which persons may be tried for rape offences.

CLAUSES OF THE BILL.

Clause 1 (1) (2) and (3) is a citation and commencement provision in the usual form. Sub clauses (4) and (5) provide for the existing law to apply to offences committed before the commencement of the Act and for the law as amended by this Act to apply to offences committed on or after the commencement. It also defines the *Magistrates (Summary Proceedings) Act 1975* as the Principal Act.

Clause 2 amends the *Magistrates (Summary Proceedings) Act 1975* by inserting a new section 47A. This section applies special rules in relation to preliminary examinations (i.e. committal proceedings) for rape offences.

The purpose or effect of these Rules is as follows—

Rule (1) : A preliminary examination is to be taken by a Stipendiary Magistrate sitting alone.

Rule (2) : A duly qualified legal practitioner is to conduct the proceedings on behalf of the informant.

Rule (3) : While the Complainant is being examined, or the statement of the complainant is being read, the only persons who may be present are—

(a) the informant ;

(b) the accused ;

(c) the complainant ;

(d) legal practitioners and their clerks acting for the prosecution and the defence ;

(e) officers of the Court and members of the police force whose presence is required in connexion with the proceedings ; and

(f) persons who have been authorized by the Stipendiary Magistrate to be present.

Rule (4) : Where under Rule (3) the Stipendiary Magistrate authorizes a person to be present, he is to state briefly the grounds upon which he has granted permission.

Rule (5) : Unless the Stipendiary Magistrate is satisfied, upon application of the informant, that there are special circumstances by reason of which it is not in the interests of justice that the informant be required to do so, the informant is to use the procedures under section 45 and 46 in relation to evidence proposed to be given by the complainant. Those procedures, commonly called the "Hand up brief" procedure, provide for the use of written statements in lieu of oral evidence, subject to the right of the accused person, or of the Stipendiary Magistrate, to require a person who has made a written statement to attend at the preliminary examination to give oral evidence.

Rule (6) : This rule sets out the manner in which an application for the purposes of Rule (5) may be made.

Rule (7) : Where the stipendiary Magistrate grants an application under Rule (5), he is to give the informant a brief written statement of the special circumstances by reason of which he has granted the application.

Rules (8) and (9) : A preliminary examination must be commenced within 3 months after the accused person has been charged, or within such longer period after the charge as is fixed by a Stipendiary Magistrate.

Rule (10) : Where a preliminary examination has not been commenced within the prescribed period, as defined by Rule (9), the accused is to be brought before a Stipendiary Magistrate who, unless he is satisfied that special circumstances warrant fixing a later time under Rule (9), is to order that the accused is not to stand trial for the offence or offences with which he has been charged.

Rule (11) : This provides that Rules (8)–(10) shall not apply—

- (a) where the accused has failed to appear in accordance with the conditions of his bail ;
- (b) where a warrant for apprehension of the accused has been issued and he has not been apprehended within 3 months from the laying of the charge ;
- (c) if a Stipendiary Magistrate is satisfied that in the interests of justice he should grant a request of the accused for delaying commencement of the preliminary examination beyond 3 months from the laying of the charge ;
- (d) if the accused has elected to stand trial by a jury without a preliminary examination.

Rule (12) : applies the provisions of Part V. of the *Magistrates (Summary Proceedings) Act 1975* to preliminary examinations in respect of rape offences, subject to these Rules and with such modifications as are necessary.

Rule (13) preserves the powers of a Justice in relation to bail applications under section 24.

Clause 3 provides for the amendment of the *Evidence Act 1958* by inserting a new section 37A, which sets out special rules of evidence in relation to any preliminary examination or proceedings relating to charges of rape offences.

These are as follows—

Rule (1) : The Court is to forbid any question, and is not to receive evidence, as to the general reputation of the complainant with respect to chastity.

Rule (2) : Without leave of the Court, the complainant is not to be cross-examined, nor is evidence to be admitted, as to her sexual activities other than with the accused.

Rule (3) and (4) set out the matters to be taken into account in determining whether leave under Rule (2) should be granted.

Rule (5) sets out procedural matters affecting an application for leave under Rule (2) and provides that leave shall not be granted unless the Court considers that the requirements of Rules (3) and (4) have been satisfied and that it is desirable in the interests of justice to do so.

Clause 4 amends the *Crimes Act 1958* by inserting a new section 359A, which imposes limitations on the time within which persons may be tried for alleged rape offences.

The effect of the new section is that a trial for an alleged rape offence shall not be commenced—

- (a) where a stipendiary magistrate has ordered that the accused shall not stand trial for the offence ;

- (b) where an information for the offence has not been laid within 3 months after the accused has been charged with the offence or such longer period as is fixed by a Judge of the Supreme Court ; or
- (c) in any other case, after the expiration of 3 months after the accused has been committed for trial or such longer period after committal as may be fixed by a Judge of the Court to which he has been committed.